BEFORE THE JUDICATURE OF MADHYA PRADESH HIGH COURT AT

J A B A L P U R

W.P.No. 1371 /97.

WRIT UNDER ARTICLE 226 CONSTITUTION OF INDIA IN THE MATTER OF PROMOTION.

PETITIONER :-

NAND KISHORE SHRIVASTAVA,
S/O SHRI SHEELVRAT SHRIVASTAVA,
AGED, POSTED ABOUT,
AND WORKING AS OFFICER-I,
DURG+RAJNANDGAON GRAMIN BANK,
HEAR QUARTER M.P.HOUSING BOARD,
SHOPPING COMPLEX, G.E.ROAD,
RAJNANDGAON. (M.P.).

V E R S U S

RESPONDENTS: (1) DURG RAJNANDGAON GRAMIN BANK,
THROUGH: ITS CHAIRMAN,
HEAR OFFICE G.E.ROAD,
M.P.HOUSING BOARD COMPLEX,
RAJNANDGAON, DISTT-RAJNANDGAON (MP) - 491441.

(2) BOARD OF DIRECTRORS,
DURG RAJNANDGAON GRAMIN BANK,
AT ITS HEAR OFFICE G.E.ROAD,
M.P.HOUSING BOARD SHOPPING COMPLEX,
RAJNANDGAON DISTRICT RAJNANDGAON,
THROUGH ITS CHAIRMAN,

(3) SHRI R.K.NEELAY S/O NOT KNOWN,
AGED ABOUT-39 YEARS,
SENIOR MANAGER, POSTED AT BRANCH DEORI,
DURG-RAJNANDGAON GRAMIN BANK,

(4) SHRI A.K.DUBEY S/O NOT KNOWN,
AGED ABOUT-38 YEARS,
SENIOR MANAGERZ DURG RAJNANDGAON GRAMIN BANK,
BRANCH KURUD, POST KURUD, TAH.& DISTT.DURG.

P.K. TIWARI

Con..2.

(4)



(5) SHRI A.C.VERMA S/O NOT KNOWN,
SENIOR AREA MANAGER, POSTED AS
SENIOR MANAGER, AUDIT AND INSPECTION,
DURG RAJNANDGAON GRAMIN BANK,
HEAD OFFICE RAJNANDGAON, G.E.ROAD,
M.P:HOUSING BOARD SHOPPING COMPLEX,
RAJNANDGAON, DISTT.RAJNANDGAON.

(6) SHRI R.K.KUKREJAW
SENIOR MANAGER (ACCOUNTS),
HEAD OFFICE DURG RAJNANDGAON GRAMIN BANK,
RAJNANDGAON, G.E.ROAD, M.P.HOUSING BOARD
SHOPPING COMPLEX, RAJNDNAGAON (M.P.).

(7) SHRI SANJAY KADAM,
SENIOR MANAGER (PERSONAL)
HEAD OFFICE, DURG RAJNANDGAON GRAMIN BANK,
RAJNANDGAON, DISTT.RAJNANDGAON (M.P.).

WRIT UNDER ARTICLE 226 CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1371 of 1997

Petitioner — Nand Kishore Shrivastava

Versus

Respondents — Durg Rajnandgaon Gramin Bank and others

**Single Bench** : Hon'ble Mr. Justice **Satish K. Agnihotri.**

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Shri Yashwant Tiwari, Advocate with Shri Amiyakant Tiwari, Advocate for the petitioner.

Shri P. S. Koshy, Advocate for the respondents.

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ORAL ORDER

(17th July, 2006)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The present petition filed under Article 226 of the Constitution of India seeks a direction to the respondents No. 1 and 2 to promote the petitioner above the respondents No. 3 to 7. It is admitted by learned counsel appearing for both the parties that the Bank has followed the guidelines framed by the Respondents No. 1 and 2 under the un-amended Rules as per the Circular dated 1st December, 1987 (Annexure-P/6).

2. Learned counsel appearing for all the parties agree that the issue involved in the present case is squarely covered by the decision of the Supreme Court in the case of **Hargovind Yadav Vs. Rewa Sidhi Gramin Bank and others** (2006 AIR SCW 2822), wherein the Supreme Court held as under:-

> "21. The next question that arises for consideration is the relief to be granted. The appellant was first considered for promotion during 1991 and was not promoted, by wrongly adopting the principle of merit-cum-seniority. The said procedure was found to be erroneous by the single Judge, Division Bench and by this Court. The Bank was directed to consider the case of Appellant for

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promotion on the basis of seniority-cum-merit. Thereafter, in the contempt proceedings initiated by the appellant, the Bank undertook to comply with the order directing consideration of the appellant's case by the procedure of seniority-cum-merit. But the Bank, again by adopting the merit-cum-seniority method, failed to promote the appellant and promoted third respondent. The procedure adopted by the Bank had been found to be faulty on three occasions by this Court and the High Court, one of which was in the case of Appellant himself. The appellant had been denied promotion for more than 16 years by repeatedly adopting such an erroneous procedure. In the circumstances, we do not think it necessary to drive the appellant once again to face the process of selection for promotion. This Court in Comptroller and Auditor General of India v. K. S. Jagannathan {1986 (2) SCC 679} observed thus:

"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and given necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy-decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and given directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

Having regard to the factual background of the case, and having regard to the fact that even under the merit-cum-seniority basis

adopted by the bank the appellant had secured high marks and he was denied promotion on the ground that he failed to secure minimum marks in the interview, there is no need to refer the matter for fresh consideration. With a view to do complete justice, in exercise of our power under Article 142 we hereby direct the first respondent bank to promote the appellant as a Field Supervisor, from the date the third defendant was promoted as Field Supervisor and place him above the third Respondent. However, he will be entitled to monetary benefits flowing from such promotion only prospectively, though the pay is to be refixed with reference to the retrospective date of promotion."

3. Accordingly, this petition is allowed with a direction to the respondents No. 1 and 2 to promote the petitioner in accordance with the directions given by the Supreme Court in the case of **Hargovind Yadav** (Supra). No order as to costs.

Sd/-
SATISH K. AGNIHOTRI
Judge

Thakur